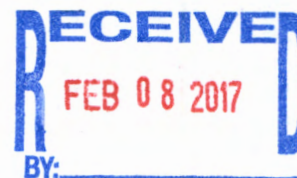


January 31, 2017

Larry Gottesman
National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460



Re: Freedom of Information Act Request: Noise Control Act of 1972

Dear Mr. Gottesman:

Previously, we had filed a FOIA request that was denied for lack of specificity (Request EPA-HQ-2017-001836). We appreciate your taking the time to speak with us giving us such detailed guidance. After getting your feedback, we have revised and clarified our request as follows:

We are law students at the University of Washington School of Law. Through one of our in-house pro-bono clinics, the Regulatory Environmental Law and Policy clinic, we are researching the Noise Control Act of 1972 and the Quiet Communities Act of 1978 (collectively the NCA). We are working with the non-profit organization Quiet Communities to generate research on and ameliorate public health-related noise issues, one avenue possibly being through the NCA. We have a general understanding of the history of the NCA and the defunding of the Office of Noise Abatement and Control (ONAC) in the early 1980s. However, we hope you can help clarify what the EPA's current stance is towards the NCA, especially regarding the regulations that had been implemented or were under consideration at the time of defunding. In the interest of furthering scholarship, we will share any materials you provide with our school's legal library.

In 1989, the General Accounting Office (now the Government Accountability Office) highlighted—in a report to Congress—preemption and other issues surrounding the EPA's un-implemented plans for transportation noise and steps other entities had taken since the defunding of ONAC.¹ Similarly, in 1992, the Administrative Conference of the United States adopted Recommendation 92-6 that the EPA, among other things, should analyze "the preemptive impact of its existing and pending noise standards."² Several Congressional representatives have attempted to reestablish the NCA several times,³ but these issues have still not been resolved.

We recognize that this combination of active statutes and defunded implementation is an unusual situation, which the EPA has apparently also struggled to understand, at least based on its request to the Administrative Conference in 1992. However, we have been unable to find much else about EPA's steps, enforcement, or decisions under the NCA since research in the early 1990s.

Materials requested should likely be located in the records of the Office of Air and Radiation. **We are requesting under the Freedom of Information Act that the EPA send all available materials identified below:**

¹ GENERAL ACCOUNTING OFFICE, GAO/RCED-90-11, TRANSPORTATION NOISE: FEDERAL CONTROL AND ABATEMENT RESPONSIBILITIES MAY NEED TO BE REVISED (1989). Available at <http://www.gao.gov/products/RCED-90-11>

² 57 F.R. 30110 (July 8, 1992).

³ See, e.g., Quiet Communities Act of 2016, 114 S. 3197 (introduced July 13, 2016); Quiet Communities Act of 2015, 114 H.R. 3384 (introduced July 29, 2015).

1. Any formal memos or legal opinions not published in the federal register related to The EPA's decisions to remove the designation of Major Sources of Noise under the NCA in Withdrawal of Products from the Agency's Reports Identifying Major Noise Sources and Withdrawal of Proposed Rules, 52 Fed. Reg. 2805 (Oct. 26, 1987);
2. Decisions on updating noise labeling regulations, 40 C.F.R. 211, proposed in: Product Noise Labeling Hearing Protection Devices, 74 Fed. Reg. RIN 2060-A025 (proposed Aug. 5, 2009). We have looked at this proposed regulation on www.regulations.gov and some of the comments and supporting documents there, but we were hoping you could help us fill in the gaps of our understanding, including potentially:
 - A final rule or final agency action on the proposed regulation;
 - Comments or technical analyses received that were not published in the federal register or on regulations.gov;
 - Formal requests from the EPA to the White House or Office of Management and Budget seeking funding related to this proposed regulation.
3. The settlement agreement between the EPA and Association of Railroads pursuant to the lawsuit filed in *AAR v. Costle*, 562 F. 2d 1310 (D.C. Cir. 1977), as mentioned in Noise Emission Standards for Transportation Equipment; Interstate Rail Carriers, 47 Fed. Reg. 2053-2 (Dec. 1, 1982).
4. Formal requests after 1981 from the EPA to the White House or Office of Management and Budget seeking funding of agency activities related to noise;
5. Formal memos or legal opinions not published in the federal register, or emails related to the General Accounting Office report in 1989 and the Administrative Conference report in 1992, including potentially:
 - The EPA's position in response to the reports regarding federal preemption of implemented and unimplemented regulations under the NCA;
 - Requests or discussions for the use of general EPA or other discretionary funds to support the performance of mandatory duties of the NCA;
 - Formal requests from other federal agencies for guidance or technical assistance regarding major sources of noise or the NCA;
 - Formal requests from state officials to the EPA for guidance or technical assistance regarding major sources of noise under the Quiet Communities Act;
 - Formal requests through email or letter from private companies seeking clarification of what they are required to do under the NCA or any of the regulations promulgated under it (40 CFR §§ 201–211)
 - Proposals or discussions of an updated national noise study pursuant to § 4(3) of the NCA.

To expedite any potential searches these key phrases are most important to our clients:

- **Major source of noise**
- **Noise emissions**
- **Proposed Labeling Standards**

We would prefer digital copies of all available materials, but are willing to accept paper copies of non-digitally available materials. We have also attached a FOIA fee waiver request.

If you have questions, please first email us at relp161@uw.edu. If it becomes necessary, you may call our clinic's Policy Director, Todd Wildermuth, at 206-221-8980.

We greatly appreciate your time and consideration.

Sincerely,

Katrina Outland

Ty Hume

University of Washington Regulatory Environmental Law and Policy Clinic

January 31, 2017

Larry Gottesman
Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460



Re: Freedom of Information Act Request for documents concerning Noise Control Act.

Dear Mr. Gottesman:

Requesting Groups University of Washington Regulatory Environmental Law & Policy Clinic (RELP) and Quiet Communities, a 501(c)(3) organization, request that all fees for the production of the requested documents be waived pursuant to 5 U.S.C. § 552. Specifically, "the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor." 40 C.F.R. § 2.107(1)(1).

Factor 1: The Requested Records Concern the Operations or Activities of the Federal Government

The subject matter of the requested FOIA concerns the scientific studies, labeling regulations, federal preemption, and mandatory duties of the federal government as it pertains to the EPA's current policy on noise emission pursuant to the federal Noise Control Act and the Quiet Communities Act (collectively NCA).

Factor 2: The Contribution to Public Understanding of Government Operations or Activities Will Be Significant.

The contribution to public understanding of government operations or activities will be significant as compared to the level of public understanding existing prior to disclosure. At present, the public and interested parties are unable to properly determine the EPA's stance on the NCA. For instance, Sidney Shapiro's seminal article on noise abatement and the EPA highlighted how the EPA's views are unclear on the NCA's preemptive rights over state and local attempts to regulate noise, and federal labeling programs left unfunded but enforceable.¹

Factor 3: The Requesters Have No Commercial Interest in the Requested Disclosure of Information.

The Requesting Groups do not have a commercial interest that would be furthered by the requested disclosure of information.

¹ Sidney A. Shapiro, *Lessons from a Public Policy Failure: EPA and Noise Abatement*, 19 Ecology L.Q. (1992). Available at: <http://scholarship.law.berkeley.edu/elq/vol19/iss1/1>

Factor 4: Requesters Interest in Disclosure is to Promote the Public Interest.

The Requesting Groups' interest in obtaining the requested information is to broaden public understanding of the EPA's administrative understanding of the NCA as explained in factor 2.

As FOIA requires, we anticipate your response within twenty working days of your receipt of this request. Should you have any questions concerning the type of materials we are interested in receiving, or wish to discuss this request, please contact us by Email or Phone number listed below.

Thank you for your consideration of this matter.

Sincerely,

Ty Hume
Katrina Outland

University of Washington Regulatory Environmental Law and Policy Clinic
relp161@uw.edu
(206)221-8980